

APR 12 2006

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE ALFREDO SUAREZ MANZO;
ADELFA AGUIRRE,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75273

Agency Nos. A95-306-092
A78-112-674

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 5, 2006**

Before: HAWKINS, McKEOWN and PAEZ, Circuit Judges.

Jose Alfredo Suarez Manzo and his wife, Adelfa Aguirre, natives and
citizens of Mexico, petition pro se for review of the Board of Immigration

* This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Appeals' ("BIA") order denying their motion to reopen removal proceedings. We dismiss the petition for review.

Petitioners' motion to reopen contained evidence concerning the same hardship ground, their daughter's medical condition, as their application for cancellation of removal. We lack jurisdiction to review the BIA's denial of the motion because the question presented was "essentially the same discretionary issue originally decided." *Fernandez v. Gonzales*, 439 F.3d 592, 600-01 (9th Cir. 2006).

We do not consider Petitioners' challenge to the IJ's underlying determination that Aguirre lacked the requisite continuous physical presence, because the BIA relied solely on hardship grounds in upholding the IJ's denial of cancellation, and in any event, the instant petition for review is not timely as to the BIA's underlying order. *See Membreno v. Gonzales*, 425 F.3d 1227, 1229 (9th Cir. 2005).

PETITION FOR REVIEW DISMISSED.